

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLES “CHAD” CAIN, III

Plaintiff

v.

ALEDO INDEPENDENT SCHOOL DISTRICT,
FRED COLLIE and SUSAN BOHN,

Defendants.

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CIVIL ACTION: 4:20-cv-00442-O

**PLAINTIFF’S RULE 12(b)(6) MOTION TO DISMISS DEFENDANTS’
COUNTER-CLAIM AND RULE 12(f) MOTION TO STRIKE DEFENSES**

Charles “Chad” Cain, III files his Rule 12(b)(6) Motion to Dismiss the Counter-Claim filed by Defendant Aledo Independent School District, Defendant Fred Collie and Defendant Susan Bohn and his Rule 12(f) Motion to Strike Defenses and he shows as follows:

Relief Requested

1. Plaintiff asks the Court under FED. R. CIV. P. 12(b)(6) to dismiss Defendants’ claim for attorney’s fees and costs raised in Defendants’ First Amended Answer because Defendants fail to state a claim upon which relief can be granted.
2. Plaintiff asks the Court under FED. R. CIV. P. 12(f) to strike Defendants’ various defenses in the First Amended Answer as the statement of defenses is insufficient, immaterial and/or redundant.
3. Alternatively, Plaintiff asks under FED. R. CIV. P. 12(e) that the Court order Defendants to re-plead these various challenged defenses.

Basis for the Relief Requested

4. In Defendants’ First Amended Answer filed May 6, 2020 in state court just before removal

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of this action, Defendants sought recovery of their attorney's fees and costs, stating that "all or a portion of Plaintiff's claims are frivolous, unreasonable, and without foundation." But this claim for attorney's fees and costs should be dismissed as the pleading does not provide fair notice of the claim and does not state factual allegations showing the right to relief is plausible.

5. Defendants' First Amended Answer also raised a variety of defenses in an inadequate, conclusory fashion that failed to provide fair notice of the challenged defenses. Without fair notice of the defenses, Defendants' First Amended Answer is deficient as a matter of law and should be struck under FED. R. CIV. P. 12(f). Alternatively, Defendants should be ordered re-plead to make a more definite statement of the challenged defenses under FED. R. CIV. P. 12(e).

6. Plaintiff describes his arguments more fully in his brief supporting these motions.

WHEREFORE, Plaintiff Charles "Chad" Cain, III, prays that the Court grants his motions under Rule 12, dismisses the counterclaim asserted by Defendants; strikes defenses that lack factual support; or alternatively, orders Defendants to re-plead.

Respectfully submitted,

LAW OFFICES OF WILLIAM J. DUNLEAVY

/s/ William J. Dunleavy

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ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF FILING AND SERVICE

I certify on May 12, 2020, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court Northern District of Texas, using the electronic case filing system of the court. The electronic filing system sent a “Notice of Electronic Filing” to attorneys of record, including Defendants’ counsel, Bridget Robinson, at <brobinson@wabsa.com> who have consented to accept this notice as service of this pleading by electronic means.

s/ William J. Dunleavy
William J. Dunleavy